



Senate

General Assembly

File No. 257

February Session, 2000

Substitute Senate Bill No. 354

Senate, March 28, 2000

The Committee on Planning and Development reported through SEN. COLEMAN of the 2nd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

An Act Implementing The Recommendations Of The Blue Ribbon Commission To Study Affordable Housing Regarding Economic Development, Job Creation And Housing Affordability.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (a) of section 32-1c of the general statutes is
2 repealed and the following is substituted in lieu thereof:

3 (a) In addition to any other powers, duties and responsibilities
4 provided for in this chapter, chapter 131, chapter 579 and section 4-8
5 and subsection (a) of section 10-320b, the commissioner shall have the
6 following powers, duties and responsibilities: (1) To administer and
7 direct the operations of the Department of Economic and Community
8 Development; (2) to report annually to the Governor, as provided in
9 section 4-60; (3) to conduct and administer the research and planning
10 functions necessary to carry out the purposes of said chapters and

11 sections; (4) to encourage and promote the development of industry
12 and business in the state and to investigate, study and undertake ways
13 and means of promoting and encouraging the prosperous
14 development and protection of the legitimate interest and welfare of
15 Connecticut business, industry and commerce, within and outside the
16 state; (5) to serve, ex officio as a director on the board of Connecticut
17 Innovations, Incorporated; (6) to serve as a member of the Committee
18 of Concern for Connecticut Jobs; (7) to promote and encourage the
19 location and development of new business in the state as well as the
20 maintenance and expansion of existing business and for that purpose
21 to cooperate with state and local agencies and individuals both within
22 and outside the state; (8) to plan and conduct a program of information
23 and publicity designed to attract tourists, visitors and other interested
24 persons from outside the state to this state and also to encourage and
25 coordinate the efforts of other public and private organizations or
26 groups of citizens to publicize the facilities and attractions of the state
27 for the same purposes; (9) to advise and cooperate with municipalities,
28 persons and local planning agencies within the state for the purpose of
29 promoting coordination between the state and such municipalities as
30 to plans and development; (10) to provide all necessary staff, services,
31 accounting and office space and equipment required by the
32 Connecticut Development Authority subject to the provisions of
33 section 4b-23, where real estate acquisitions are involved; (11) to aid
34 minority businesses in their development; (12) to appoint such
35 assistants, experts, technicians and clerical staff, subject to the
36 provisions of chapter 67, as are necessary to carry out the purposes of
37 said chapters and sections; (13) to employ other consultants and
38 assistants on a contract or other basis for rendering financial, technical
39 or other assistance and advice, provided in implementing the
40 Connecticut economic information system the commissioner shall to
41 the maximum extent feasible contract with private vendors for
42 software, certain data sets and data updating services; (14) to acquire
43 or lease facilities located outside the state subject to the provisions of

44 section 4b-23; (15) to advise and inform municipal officials concerning
45 economic development and collect and disseminate information
46 pertaining thereto, including information about federal, state and
47 private assistance programs and services pertaining thereto; (16) to
48 inquire into the utilization of state government resources and
49 coordinate federal and state activities for assistance in and solution of
50 problems of economic development and to inform and advise the
51 Governor about and propose legislation concerning such problems;
52 (17) to conduct, encourage and maintain research and studies relating
53 to industrial and commercial development; (18) to prepare and review
54 model ordinances and charters relating to these areas; (19) to maintain
55 an inventory of data and information and act as a clearinghouse and
56 referral agency for information on state and federal programs and
57 services relative to the purpose set forth herein. The inventory shall
58 include information on all federal programs of financial assistance for
59 defense conversion projects and other projects consistent with a
60 defense conversion strategy and shall identify businesses which would
61 be eligible for such assistance and provide notification to such business
62 of such programs; (20) to conduct, encourage and maintain research
63 and studies and advise municipal officials about forms of cooperation
64 between public and private agencies designed to advance economic
65 development; (21) to promote and assist the formation of municipal
66 and other agencies appropriate to the purposes of this chapter; (22) to
67 require notice of the submission of all applications by municipalities
68 and any agency thereof for federal and state financial assistance for
69 economic development programs as relate to the purposes of this
70 chapter; (23) with the approval of the Commissioner of Administrative
71 Services, to reimburse any employee of the department, including the
72 commissioner, for reasonable business expenses, including, but not
73 limited to, mileage, travel, lodging, and entertainment of business
74 prospects and other persons to the extent necessary or advisable to
75 carry out the purposes of subdivisions (4), (7), (8) and (11) of this
76 subsection and other provisions of this chapter; (24) to assist in

77 resolving solid waste management issues; [and] (25) to develop and
78 implement the Connecticut economic information system, in
79 consultation with the Connecticut Economic Information System
80 Steering Committee established under section 32-6i; and (26) to
81 accompany any economic development assistance with incentives to
82 assure that jobs created through such economic assistance will be full-
83 time, that wages and benefits for new employees will be adequate to
84 promote such employees' economic self-sufficiency and assure
85 affordability in their local housing market, and that companies
86 receiving such economic assistance will not interfere with employee
87 rights to unionize and will permit them to do so in a simplified
88 manner.

89 Sec. 2. Section 31-53 of the general statutes is repealed and the
90 following is substituted in lieu thereof:

91 (a) Each contract for the construction, remodeling, refinishing,
92 refurbishing, rehabilitation, alteration or repair of any public works
93 project by the state or any of its agents, or by any political subdivision
94 of the state or any of its agents, shall contain the following provision:
95 "The wages paid on an hourly basis to any mechanic, laborer or
96 [workman] worker employed upon the work herein contracted to be
97 done and the amount of payment or contribution paid or payable on
98 behalf of each such employee to any employee welfare fund, as
99 defined in subsection [(h)] (i) of this section, shall be at a rate equal to
100 the rate customary or prevailing for the same work in the same trade
101 or occupation in the town in which such public works project is being
102 constructed. Any contractor who is not obligated by agreement to
103 make payment or contribution on behalf of such employees to any
104 such employee welfare fund shall pay to each employee as part of [his]
105 the employee's wages the amount of payment or contribution for [his]
106 the employee's classification on each pay day."

107 (b) Any person who knowingly or wilfully employs any mechanic,

108 laborer or [workman] worker in the construction, remodeling,
109 refinishing, refurbishing, rehabilitation, alteration or repair of any
110 public works project for or on behalf of the state or any of its agents, or
111 any political subdivision of the state or any of its agents, at a rate of
112 wage on an hourly basis which is less than the rate customary or
113 prevailing for the same work in the same trade or occupation in the
114 town in which such public works project is being constructed,
115 remodeled, refinished, refurbished, rehabilitated, altered or repaired,
116 or who fails to pay the amount of payment or contributions paid or
117 payable on behalf of each such employee to any employee welfare
118 fund, or in lieu thereof to the employee, as provided by subsection (a),
119 shall be fined not less than two thousand five hundred dollars but not
120 more than five thousand dollars for each offense and (1) for the first
121 violation, shall be disqualified from bidding on contracts with the state
122 or any political subdivision until the contractor or subcontractor has
123 made full restitution of the back wages owed to such persons and for
124 an additional six months thereafter, and (2) for subsequent violations,
125 shall be disqualified from bidding on contracts with the state or any
126 political subdivision until the contractor or subcontractor has made
127 full restitution of the back wages owed to such persons and for not less
128 than an additional two years thereafter. In addition, if it is found by
129 the contracting officer representing the state or political subdivision
130 [thereof] of the state that any mechanic, laborer or [workman] worker
131 employed by the contractor or any subcontractor directly on the site
132 for the work covered by the contract has been or is being paid a rate of
133 wages less than the rate of wages required by the contract to be paid as
134 required by this section, the state or contracting political subdivision
135 [thereof] of the state may (A) by written notice to the contractor,
136 terminate such contractor's right to proceed with the work or such part
137 of the work as to which there has been a failure to pay said required
138 wages and to prosecute the work to completion by contract or
139 otherwise, and the contractor and [his] the contractor's sureties shall be
140 liable to the state or the contracting political subdivision for any excess

141 costs occasioned by the state or the contracting political subdivision
142 thereby, or (B) withhold payment of money to the contractor or
143 subcontractor. The contracting department of the state or the political
144 subdivision [thereof shall within] of the state shall, not later than two
145 days after taking such action, notify the Labor Commissioner in
146 writing of the name of the contractor or subcontractor, the project
147 involved, the location of the work, the violations involved, the date the
148 contract was terminated, and steps taken to collect the required wages.

149 (c) The Labor Commissioner may make complaint to the proper
150 prosecuting authorities for the violation of any provision of subsection
151 (b).

152 (d) For the purpose of predetermining the prevailing rate of wage
153 on an hourly basis and the amount of payment or contributions paid or
154 payable on behalf of each employee to any employee welfare fund, as
155 defined in subsection [(h)] (i) of this section, in each town where such
156 contract is to be performed, the Labor Commissioner shall (1) hold a
157 hearing at any required time to determine the prevailing rate of wages
158 on an hourly basis and the amount of payment or contributions paid or
159 payable on behalf of each person to any employee welfare fund, as
160 defined in subsection [(h)] (i) of this section, upon any public work
161 within any specified area, and shall establish classifications of skilled,
162 semiskilled and ordinary labor, or (2) adopt and use such appropriate
163 and applicable prevailing wage rate determinations as have been made
164 by the Secretary of Labor of the United States under the provisions of
165 the Davis-Bacon Act, as amended.

166 (e) The Labor Commissioner shall determine the prevailing rate of
167 wages on an hourly basis and the amount of payment or contributions
168 paid or payable on behalf of such employee to any employee welfare
169 fund, as defined in subsection [(h)] (i) of this section, in each locality
170 where any such public work is to be constructed, and the agent
171 empowered to let such contract shall contact the Labor Commissioner,

172 at least ten but not more than twenty days prior to the date such
173 contracts will be advertised for bid, to ascertain the proper rate of
174 wages and amount of employee welfare fund payments or
175 contributions and shall include such rate of wage on an hourly basis
176 and the amount of payment or contributions paid or payable on behalf
177 of each employee to any employee welfare fund, as defined in
178 subsection [(h)] (i) of this section, or in lieu thereof the amount to be
179 paid directly to each employee for such payment or contributions as
180 provided in subsection (a) of this section for all classifications of labor
181 in the proposal for the contract. The rate of wage on an hourly basis
182 and the amount of payment or contributions to any employee welfare
183 fund, as defined in subsection [(h)] (i) of this section, or cash in lieu
184 thereof, as provided in subsection (a) of this section, shall, at all times,
185 be considered as the minimum rate for the classification for which it
186 was established. Prior to the award of any contract subject to the
187 provisions of this section, such agent shall certify in writing to the
188 Labor Commissioner the total dollar amount of work to be done in
189 connection with such public works project, regardless of whether such
190 project consists of one or more contracts. Upon the award of any
191 contract subject to the provisions of this section, the contractor to
192 whom such contract is awarded shall certify, under oath, to the Labor
193 Commissioner the pay scale to be used by such contractor and any of
194 [his] the contractor's subcontractors for work to be performed under
195 such contract.

196 (f) Each employer subject to the provisions of this section or section
197 31-54 shall (1) keep, maintain and preserve such records relating to the
198 wages and hours worked by each employee and a schedule of the
199 occupation or work classification at which each mechanic, laborer or
200 [workman] worker on the project is employed during each work day
201 and week in such manner and form as the Labor Commissioner
202 establishes to assure the proper payments due to such employees or
203 employee welfare funds under this section or section 31-54, and (2)
204 submit monthly to the contracting agency a certified payroll which

205 shall consist of a complete copy of such records accompanied by a
206 statement signed by the employer which indicates that (A) such
207 records are correct; (B) the rate of wages paid to each mechanic, laborer
208 or [workman] worker and the amount of payment or contributions
209 paid or payable on behalf of each such employee to any employee
210 welfare fund, as defined in subsection [(h)] (i) of this section, are not
211 less than the prevailing rate of wages and the amount of payment or
212 contributions paid or payable on behalf of each such employee to any
213 employee welfare fund, as determined by the Labor Commissioner
214 pursuant to subsection (d) of this section, and not less than those
215 required by the contract to be paid; (C) the employer has complied
216 with the provisions of this section and section 31-54; (D) each such
217 employee is covered by a workers' compensation insurance policy for
218 the duration of [his] the employee's employment, which shall be
219 demonstrated by submitting to the contracting agency the name of the
220 workers' compensation insurance carrier covering each such employee,
221 the effective and expiration dates of each policy and each policy
222 number; (E) the employer does not receive kickbacks, as defined in 41
223 USC 52, from any employee or employee welfare fund; and (F)
224 pursuant to the provisions of section 53a-157a, the employer is aware
225 that filing a certified payroll which [he] the employer knows to be false
226 is a class D felony for which the employer may be fined up to five
227 thousand dollars, imprisoned for up to five years, or both. This
228 subsection shall not be construed to prohibit a general contractor from
229 relying on the certification of a lower tier subcontractor, provided the
230 general contractor shall not be exempted from the provisions of section
231 53a-157a if [he] the general contractor knowingly relies upon a
232 subcontractor's false certification. Notwithstanding the provisions of
233 section 1-210, as amended by section 1 of public act 99-156, the certified
234 payroll shall be considered a public record and every person shall have
235 the right to inspect and copy such records in accordance with the
236 provisions of section 1-212, as amended by section 2 of public act 99-
237 71. The provisions of sections 31-59(a), 31-59(b), 31-66 and 31-69 which

238 are not inconsistent with the provisions of this section or section 31-54
239 shall apply to this section. Failing to file a certified payroll pursuant to
240 subdivision (2) of this subsection is a class D felony for which the
241 employer may be fined up to five thousand dollars, imprisoned for up
242 to five years, or both.

243 (g) The provisions of this section [shall] do not apply where the total
244 cost of all work to be performed by all contractors and subcontractors
245 in connection with new construction of any public works project is less
246 than four hundred thousand dollars or where the total cost of all work
247 to be performed by all contractors and subcontractors in connection
248 with any remodeling, refinishing, refurbishing, rehabilitation,
249 alteration or repair of any public works project is less than one
250 hundred thousand dollars.

251 (h) The provisions of this section apply to each construction project
252 financed with assistance from the Department of Economic and
253 Community Development, provided the total amount of such
254 assistance for a project involving (1) new construction equals or
255 exceeds four hundred thousand dollars, or (2) remodeling, refinishing,
256 refurbishing, rehabilitation, alteration or repair equals or exceeds one
257 hundred thousand dollars.

258 [(h)] (i) As used in this section, section 31-54 and section 31-89a, as
259 amended by this act, "employee welfare fund" means any trust fund
260 established by one or more employers and one or more labor
261 organizations or one or more other third parties not affiliated with the
262 employers to provide from moneys in the fund, whether through the
263 purchase of insurance or annuity contracts or otherwise, benefits
264 under an employee welfare plan; provided such term shall not include
265 any such fund where the trustee, or all of the trustees, are subject to
266 supervision by the Commissioner of Banking of this state or any other
267 state or the Comptroller of the Currency of the United States or the
268 Board of Governors of the Federal Reserve System, and "benefits under

269 an employee welfare plan" means one or more benefits or services
270 under any plan established or maintained for employees or their
271 families or dependents, or for both, including, but not limited to,
272 medical, surgical or hospital care benefits; benefits in the event of
273 sickness, accident, disability or death; benefits in the event of
274 unemployment, or retirement benefits.

275 Sec. 3. Subsection (a) of section 31-89a of the general statutes is
276 repealed and the following is substituted in lieu thereof:

277 (a) Payments to employee welfare funds, as defined in subsection
278 [(h)] (i) of section 31-53, as amended by this act, which are past due
279 under the terms of a written contract or rules and regulations adopted
280 by the trustees of such funds shall be considered as wages for the
281 purpose of section 31-72.

HSG Committee Vote: Yea 7 Nay 4 JFS C/R PD

PD Committee Vote: Yea 9 Nay 7 JF

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: Indeterminate Cost and Potential
Indeterminate Savings (Bond Funds),
Potential Minimal Cost, and Potential
Minimal Revenue Gain

Affected Agencies: Department of Economic and Community
Development, Department of Labor, Various
Criminal Justice System Agencies

Municipal Impact: None

Explanation

State Impact:

The passage of this bill would result in additional costs to state bond funds that are indeterminate, and could also result in potential minimal costs and in potential minimal revenue gain to the state. The bill extends prevailing wage requirements to construction projects financed through the Department of Economic and Community Development (DECD), if the projects are above the specified threshold value (\$400,000 for new construction and \$100,000 for repairs). The bill would result in an increase in the cost of such DECD projects that cannot be determined at this time. A 1996 report by the Legislative Program Review and Investigations Committee estimated that prevailing wage requirements add from 4% to 7% to the cost of a construction project. DECD has averaged administering between 19

and 26 projects per year. It is not known at this time how many of these would have been subject to the bill's threshold value requirements. It should also be noted that projects that receive federal funds are subject to the federal prevailing wage law (Davis-Bacon Act). This could also result in additional administrative costs to DECD, depending on the number of projects subject to the new prevailing wage requirements.

There is a workload increase for the Department of Labor associated with calculating the prevailing wages for construction projects financed by DECD that meet the dollar amounts established in this bill. This workload increase can be handled within normal budgetary resources.

In addition, extending the prevailing wage law to additional projects could result in additional violations of these laws. Although the number of these cases is uncertain, it is estimated that the impact on the criminal justice system will be minimal and can be absorbed within current budgetary and caseload structures. Any increase in revenues from criminal fines is also anticipated to be minimal.

The bill also requires the Commissioner of DECD to include incentives in any economic development assistance to assure (1) that the jobs created will be full-time, (2) that wages and benefits paid will be adequate to promote economic self-sufficiency and home ownership, and (3) that companies receiving assistance will not interfere with employees' rights to unionize. To the extent that any of the requirements result in less state assistance being provided, there would be a savings to the state. The exact impact is not known.

OLR Bill Analysis

sSB 354

AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE BLUE RIBBON COMMISSION TO STUDY AFFORDABLE HOUSING REGARDING ECONOMIC DEVELOPMENT, JOB CREATION, AND HOUSING AFFORDABILITY.**SUMMARY:**

This bill extends the requirement that government contractors pay prevailing wage rates to Department of Economic and Community Development (DECD)-funded private construction projects. This applies if DECD provides \$400,000 or more in assistance for a new construction project or \$100,000 or more for rehabilitation or repairs. By law, government contractors must pay wages at least equal to those customary and prevailing in the area where the public construction project occurs. For public works projects, prevailing wage is triggered if the total cost is \$400,000 or more for new construction, or \$100,000 or more for alterations and repairs.

The bill also requires the DECD commissioner to include, with any economic development assistance, incentives to assure full-time jobs and wages and benefits that adequately promote economic self-sufficiency and accessibility to local housing markets. The incentives must also assure that companies receiving such economic assistance will not interfere with employees' rights to unionize and will allow them to unionize in a "simplified manner" (see COMMENT).

EFFECTIVE DATE: October 1, 2000

FURTHER EXPLANATION***Applicable Prevailing Wage Provisions***

The bill applies to construction, remodeling, refinishing, refurbishing, rehabilitation, and alteration or repair of any covered DECD-funded project. It extends the requirements for public works projects to the

covered DECD-funded projects.

Under law, public works prevailing wage provisions include the requirement for contractors to pay wages equal to the rate customary or prevailing for the same work in the same trade or occupation in the town such a public works project is being constructed. Penalties for noncompliance include possible debarment from state and municipal work for up to three years and a fine of \$2,500 to \$5,000 per offense. A contractor could be prosecuted for larceny depending on the amount of wages owed. Filing a false certified payroll is a class D felony, punishable by one to five years in prison, a fine of up to \$5,000, or both.

BACKGROUND

Related Bill

S.B. 486, which the Finance, Revenue and Bonding Committee favorably reported to the floor, is similar to this bill.

COMMENT

Federal Preemption

The portion of the bill dealing with rights to unionize may violate the National Labor Relations Act (NLRA), the major federal law governing private-sector labor relations. This would depend on the meaning of “simplified manner,” which the bill does not define. The U.S. Supreme Court has found in some cases that the NLRA preempts state laws addressing rights to unionize (*Wisconsin Department of Industry, Labor, and Human Relations v. Gould Inc.*, 106 S. Ct. 1057 (1986)). In other cases, it has found similar state laws acceptable if the purpose is not to regulate private sector labor, but to achieve a larger public policy purpose (*Building and Construction Trades Council of Metropolitan District v. Associated Builders and Contractors of Massachusetts/Rhode Island, Inc. et al*, 113 S. Ct. 1190 (1993)).

COMMITTEE ACTION

Select Committee on Housing

Joint Favorable Substitute Change of Reference
Yea 7 Nay 4

Planning and Development Committee

Joint Favorable Report
Yea 9 Nay 7